IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 17355 of 2003

Between:

Sri Y.S.Reddy, S/o. Venkat Reddy,

Aged about 35 years, Occ: Conductor,

R/o.Proddator, Cuddapah District.

..... PETITIONER

AND

1. The Regional Manager,

APSRTC., Cuddapah, Cuddapah District.

2. The Deputy Chief Traffic Manager,

APSRTC., Cuddapah, Cuddapah District.

3. The Depot Manager,

APSRTC., Cuddapah, Cuddapah District.

4. The Principal Secretary,

Labour Employment & Training Department,

Government of Andhra Pradesh,

Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly on in the nature of Writ of Certiorari calling for the records relating to the order passed in I.D.No: 203 of 2001 dated 29-1-

2003 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur and quash the same, further declare the order of removal passed in proceedings No.02/95(44)/99-PDTR dated 23-8-1999; order of the appellate authority in proceedings No.St/20B(117)/99-RM-C dated 16-11-1999 and the orders passed by the reviewing authority in proceedings No.PA/20A(3)/2000-RM-C dated 13-1-2000 and G.O.Rt.No.698 dated 4.4.2003 as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

Counsel for the Petitioner: MR.C.Srinivasa Baba

Counsel for the Respondents: P.Vinayaka Swamy

The Court made the following:

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P. No.17355 of 2003

ORDER:

Challenging the award, dated 29-01-2003, passed in I.D. No.203 of 2001 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, (for short 'the Tribunal'), the present writ petition has been filed.

The sequence of the trial is to set aside the removal order passed by the disciplinary authority as confirmed by the appellate authority as well as review authority, the brief facts that are necessary for disposal of the present writ petition are as follows:

The petitioner was appointed as conductor in the A.P. State Road Transport Corporation (for short 'the Corporation') on 25-12-1991. On 13-03-1999, while he was conducting his duty in a bus bearing No.AP9Z-9624 on the route of Proddutur to Tadipatri, the Travelling Ticket Inspectors of Regional Enforcement Squad, Kadapa conducted a check at stage No.17 and they found certain cash and ticket irregularities. They obtained the

statement of the passengers concerned in the presence of the petitioner and the petitioner did not give any spot statement on the ground that he was not feeling well and he stated that he would give a statement subsequently. Then the checking official prepared a check sheet and also a charge memo, which were served on the petitioner, and also seized the S.R. and sent a special report to the third respondent-Depot Manager, APSRTC, Proddutur. Basing on the said report, the third respondent kept the petitioner under suspension by order, dated 19-03-1999, and issued a charge sheet for which the petitioner gave a reply. Without proper appreciation of the explanation offered by the petitioner, the respondents appointed an enquiry officer, who submitted a report to the respondents holding that the charges were proved against the petitioner. Having accepted the report of the enquiry officer, the petitioner was removed from service vide order, dated 13-08-1999. Challenging the said order passed by the third respondent, the petitioner preferred an appeal before the second respondent-Deputy Chief Traffic Manager, APSRTC, Cuddapah, who rejected the same vide order, dated 16-11-1999. Thereafter, he preferred a review petition before the first respondent-Regional Manager, who also rejected the said review petition vide order, dated 13-01-2000. Subsequently the petitioner filed a writ petition No.12711 of 2001 before this Hon'ble Court. While disposing the above writ petition, this Hon'ble Court directed the petitioner to approach the Labour Court for redressal of his grievance, as it is a case of removal from service. In pursuance of the said order, the petitioner approached the Tribunal by filing I.D.No.203 of 2001, which was dismissed on
29-01-2003. Aggrieved by the order of the Tribunal, the present writ petition has been filed.

It is stated by the petitioner that the order of the Tribunal is contrary to law and facts on record. It is also stated that the Tribunal failed to take into consideration that the departmental enquiry is vitiated and no reasonable opportunity was given to him and the entire enquiry was conducted in utter violation of principles of natural justice. Further, it is also stated that the Tribunal has got discretionary power under Section 11-A of the Industrial Disputes Act and the same was not exercised in the petitioner's case and his I.D. was dismissed erroneously. Further, it is also stated that he was not given a reasonable opportunity to cross-examine the witnesses to disprove the allegations against him in the departmental enquiry and he prays to set

aside the same.

A detailed counter affidavit filed by the respondents stating that duly following the principles of natural justice, a regular departmental enquiry was conducted against the petitioner.

As the petitioner found guilty for the charges framed against him, he was removed from the service on 13-08-1999 and a final order has been passed. Hence there are no grounds to interfere with the same and prays to dismiss the present writ petition.

Learned counsel appearing for the petitioner contended that there is no evidence in the departmental enquiry to substantiate the charges and findings given by the enquiry officer are totally bias. He further contended that no opportunity was given to cross-examine the witnesses. He also contended that the punishment imposed is disproportionate, hence he prays to set aside the same.

Learned counsel for the respondents-Corporation contended that on appreciation of the evidence available on record, the Tribunal gave a finding that the charges held against the petitioner are true. The findings of the Tribunal cannot be said to be without any material on record. On appreciation of the evidence available on record, the charges are proved and the enquiry officer gave a categorical finding to that effect. Hence, there are no grounds to interfere with the findings given by the enquiry officer and the Tribunal.

The two charges framed against the petitioner are as follows:

CHARGE NO.1:

"For having collected the fare of Rs.3/- den.each from a batch of 10 passengers (marriage party) found alighting at Vanganur (stage No.17) having boarded the bus at Tadipatri (stage No.19) and issued unpunched tickets Nos.468/033813 to 822 (E.10) of Rs.3/- den.and not accounting the same in the S.R.No.A5/2181363."

CHARGE NO.2:

"For your failure to show the no.of issues of Rs.3/-den.against the stage No.19 and failure to correctly show the total No.of passengers

in the service S.R. which amounts improper maintenance of records there by constituting misconduct under Reg.

This Court cannot re-appreciate the evidence recorded in the departmental enquiry by sitting as an appellate authority in an appeal over the judgment of the Tribunal, but at the same time, it has to be seen whether the findings of the enquiry officer are based on any evidence or not.

As seen from the enquiry report, it is clear that one
C.C. Tirupathaiah stated in the enquiry that the conductor after issuing tickets to the ten passengers, with a denomination of Rs.3/- each, for which the passengers have paid Rs.30/- to the conductor, and the tickets were returned to the conductor at his request.
The said tickets were found unpunched and moreover those tickets were not accounted for in the S.R. The passengers did not support the case in the enquiry. The evidence on record establishes that some unpunched tickets are available with the conductor at the time of check and they have not been accounted for in the S.R. Therefore, the reason is obvious that the conductor can reissue the same at a later point of time. There is no necessity for the conductor to keep those issued tickets to the passengers without punching them. No proper explanation was given by the delinquent as to why he has issued tickets without punching them and kept the same with him even after issuing the same to the passengers. Therefore, after elaborate consideration of the evidence on record, the disciplinary authority passed the proceedings, dated 23-08-1999, and the same was confirmed in the appeal and the review petition was also rejected.

Except making a bald allegation in the affidavit, there is nothing on record to show that the Tribunal failed to consider the evidence on behalf of the petitioner or that no opportunity was given to him to cross-examine the witnesses in the departmental enquiry. As a matter of fact, the petitioner did not submit his explanation to the charge sheet. On consideration of the entire material on record, the Tribunal came to a conclusion that the findings of the enquiry officer were based on record and there was no need to disturb the same.

As seen from the observations of the Tribunal, the writ petitioner has cross-examined one C.C. Thirupathaiah, at length.

Therefore, the contention of the petitioner that he was denied the right of cross-examination in the departmental enquiry cannot be accepted. So under any stretch of imagination, it cannot be said that the findings are perverse and not based on any evidence on record.

There cannot be any dispute that on every proceeding and decision taken in the administrative matters, the scope of the judicial review is confined to the decision-making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the disciplinary authority, which may have the effect of vitiating the departmental enquiry. In the decision making process. If the authority deciding the case has ignored the vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of this Court under Article 226 of the Constitution can be invoked to set aside such erroneous findings. If there was no irrationality in decision-making process or no procedural irregularity in the process of decision-making, the question of interference while exercising the *certiorari* powers does not arise. Basing on the evidence available on record, the enquiry officer gave a categorical finding holding that the charges 1 and 2 are proved. On appreciation of the evidence on record, the enquiry officer came to such a conclusion. It cannot be said that the findings are based on surmises and conjectures. What are the principles of natural justice that have been violated in conducting the enquiry were not specifically pleaded. Therefore, the findings of the enquiry officer are not vitiated for violation of principles of natural justice.

With regard to the exercise of powers under Section 11-A of the Industrial Disputes Act 1947, the alleged misconduct against the petitioner is that he collected the fare of Rs.3/- each from a batch of ten passengers and issued unpunched tickets to them and failed to show the total number of passengers in the S.R. which amounts to improper maintenance of record. It is in the evidence to show that the tickets issued

by the conductor were unpunched and the same were taken back by him from the passengers. He has no authority to take back the tickets after issuing the same to the passengers. There is no reason as to why he has not punched the tickets.

Further more, issuance of those tickets are not accounted for in the S.R., which is a serious irregularity. The reasons are obvious, so as to issue the same in the next trip to defraud the revenue of the Corporation. Otherwise, there is no need or scope for the petitioner to keep those unpunched tickets with him. The punishment of removal order issued by the disciplinary authority does not shock the conscience of the Court because the facts and circumstances indicate the intention of the petitioner to defraud the revenue of the Corporation. Considering all these aspects, the Tribunal rightly held that the punishment of removing the petitioner is reasonable.

In the above circumstances, the said finding does not deserve any modification. Once the enquiry was conducted following the principles of natural justice and once the charges are proved against the delinquent basing upon the evidence on record, this Court will not interfere with the punishment, unless it shocks the conscience of the Court. Having regard to the gravity of the offence, the order of removal is proportionate to the proved misconduct. Hence, there are absolutely no grounds to interfere with the impugned order.

Accordingly the writ petition is dismissed confirming the order of the Tribunal. No order as to costs.

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K.C. BHANU, J

Dated: 04-07-2005

LSK

To

1. The Regional Manager,

APSRTC., Cuddapah, Cuddapah District.

2. The Deputy Chief Traffic Manager,

APSRTC., Cuddapah, Cuddapah District.

3. The Depot Manager,

APSRTC., Cuddapah, Cuddapah District.

4. The Principal Secretary,

Labour Employment & Training Department,

Government of Andhra Pradesh,

Secretariat, Hyderabad.

5. Two C.Cs. to the G.P. for Labour, High Court buildings, Hyderabad. (OUT)

6. Two C.D. copies.